

Atlantic Richfield Company

Patricia Gallery
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July 5, 2018

VIA EMAIL AND U.S. MAIL

Andrew J. Lensink, Esq.
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Charles Coleman
Project Manager
U.S. EPA Region 8, Montana Office
10 West 15th Street, Suite 3200
Helena, MT 59626

Re: Notice of Intent to Comply with Amendment No. 2 to Administrative Order
for Remedial Action, Anaconda Smelter Superfund Site;
Stucky Ridge / RDU 1 - EPA Docket No. CERCLA 08-2002-10

Gentlemen:

Respondent Atlantic Richfield Company ("Atlantic Richfield") provides this letter as notice that it will comply with the lawful requirements of the above-referenced Amendment No. 2 to the September 2002 Unilateral Administrative Order ("UAO") for Remedial Action within the Stucky Ridge Remedial Design Unit of the Anaconda Smelter Site ("Site"), Docket No. CERCLA 08-2002-10.

Atlantic Richfield incorporates by reference its September 27, 2002 correspondence, which sets forth Atlantic Richfield's Comments and Objections to the terms of EPA's UAO. The present Amendment No. 2 supports performance of EPA's selected remedial action within RDU 1 for the area upgradient of the Old Works Golf Course ("OWGC"). The project area is composed of portions of Stucky Ridge Areas 1, 2 and 3, as outlined in the Agency-approved *RDU Final*

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Design Report (FDR) / Remedial Action Work Plan (RAWP)(AR 2005; SEMSD ID Nos. 119310 and 1119311).

Paragraph 3, appropriately references the Agency-approved *FDR / RAWP* to describe the Work required under UAO Amendment No. 2; however, EPA's April 20, 2018 letter approved Request for Change ("RfC") No. 1, which describes certain modifications to the *RDU 1 FDR/RAWP*. Specifically, EPA's April 20, 2018 letter approved Atlantic Richfield's *RfC No. 1*, which EPA described as *RfC for RDU 1 – Stucky Ridge Area Upgradient of the Old Works Golf Course*, dated April 6, 2018. Though not identified in Amendment No. 2, the modifications described in *RfC No. 1* provide additional clarifications, design enhancements and other information regarding execution of remedial action within Stucky Ridge Areas 1, 2 and 3.

Should our understanding be incorrect, and EPA's approval of *RfC No. 1* is not incorporated into and part of the work scope under Amendment No. 2 to the UAO, please advise Shannon Dunlap of EPA's position at your earliest convenience. Mr. Dunlap may be contacted at Shannon.Dunlap@BP.com or by phone at (406) 723-1813. Atlantic Richfield will identify its primary contractors for implementation of remedial action under Amendment No. 2 later this year when the contractor-selection process is complete.

Section III, Paragraph 8, directs that the Work shall be completed no later than December 31, 2025. Remedy construction requires access to privately-owned lands within RDU-1. Atlantic Richfield will seek landowner agreements to complete the Work in a timely manner, and advise EPA of difficulties that may be encountered in obtaining access. Given our experiences with landowner access across the Site, completion of the Work by December 31, 2025 may not be achievable.

This letter also provides notice of a potential impediment to compliance that may arise in the future as a consequence of the ongoing *Christian* litigation (*Christian et al. v. Atlantic Richfield Co.*, No: DV-08-173 (Dist. Ct. Silver Bow Cty.)). As EPA is aware, in December 2017, the Montana Supreme Court generally confirmed the Montana Second Judicial District Court's September 2016 rulings related to plaintiffs' claim for recovery of restoration damages. The Montana Supreme Court held that under Montana law, a group of approximately 100 plaintiffs in the Opportunity area can bring claims against Atlantic Richfield to "restore"

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residential properties impacted by the former Anaconda Smelter operations. Plaintiffs seek a type of restoration that would require Atlantic Richfield to fund plaintiffs' performance, under state law, of a different remedy that conflicts with the remedial actions selected by EPA for the Anaconda Regional Water Waste and Soils operable unit and the Community Soils operable unit. The state district court has scheduled a jury trial in October 2018 to hear the *Christian* plaintiffs' claims.

Atlantic Richfield filed a petition for *certiorari* on April 27, 2018, seeking U.S. Supreme Court review and reversal of the Montana Supreme Court's December 2017 decision. The Supreme Court may rule on the petition as early as fall 2018 or as late as spring 2019. Atlantic Richfield's petition explains why the *Christian* plaintiffs' restoration claims are barred by CERCLA.

None of the plaintiffs in the *Christian* litigation are known to reside or own residential property within the Stucky Ridge RDU 1 sub-area. However, the success of Atlantic Richfield's Supreme Court petition for review and the outcome of the *Christian* trial are unknown at this time. Should other landowners file claims challenging EPA's selected remedies within RDU-1 or the Site generally, Atlantic Richfield could face an irreconcilable conflict where EPA requires compliance with its order to implement and maintain EPA's selected remedy, while a state court orders Atlantic Richfield to fund restoration work that interferes with or prevents the company from complying with EPA's order.

For all of the above reasons, Atlantic Richfield objects to UAO Amendment No. 2 and EPA's demand, pursuant to Paragraph 19 of the UAO, that Atlantic Richfield provide written notice that it will "unconditionally and unequivocally commit" to comply with Amendment No. 2 to the UAO. At this time, Atlantic Richfield will move forward with funding and implementation of the Work required under the UAO and UAO Amendment No. 2. Atlantic Richfield reserves its right to reassess its defenses to EPA's request for compliance with UAO Amendment No. 2 as further developments in the *Christian*-related matters occur.

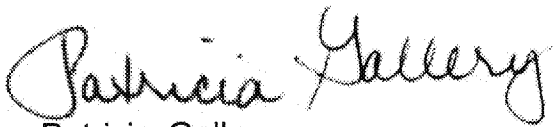
Please direct any inquiries related to Atlantic Richfield's comments regarding the *Christian* matter and its bearing on future work under the UAO to Jean Martin at Jean.Martin@BP.com.

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Thank you for consideration of Atlantic Richfield's comments. Please include these comments on the UAO in the administrative record and Site file for the Anaconda Smelter Superfund Site.

Sincerely,

Atlantic Richfield Company

A handwritten signature in cursive script that reads "Patricia Gallery".

Patricia Gallery
Vice President

cc: Betsy Smidinger
Suzanne Bohan
Joe Vranka
Joel Chavez
Katherine Haque-Hausrath, Esq.
Jean Martin, Esq.
Ron Halsey
Shannon Dunlap
Loren Burmeister
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William Duffy, Esq.
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